

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VERSATA SOFTWARE, INC., F/K/A	§	
TRILOGY SOFTWARE, INC.; and	§	
VERSATA DEVELOPMENT GROUP,	§	
INC., F/K/A TRILOGY DEVELOPMENT	§	
GROUP, INC.	§	
	§	
Plaintiffs,	§	
v.	§	C.A. No. 2:12-cv-00387-JRG
	§	
VOLUSION, INC.	§	JURY TRIAL DEMANDED
	§	
Defendant	§	

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc. and Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc. (collectively “Versata”) file this First Amended Complaint for patent infringement against Defendant Volusion, Inc. (“Volusion”).

PARTIES

1. Plaintiff Versata Software, Inc., f/k/a Trilogy Software, Inc., is a corporation existing under the laws of Delaware with its principal place of business at 401 Congress, Suite 2650, Austin, Texas 78730.

2. Plaintiff Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc., is a corporation existing under the laws of Delaware with its principal place of business at 401 Congress, Suite 2650, Austin, Texas 78730.

3. Defendant Volusion, Inc. is a Delaware corporation that has its principal place of business at 8911 N. Capital of Texas Highway, Austin, TX 78759. Volusion may be served

through its registered agent, Capitol Corporate Services, Inc., 800 Brazos, Suite 400, Austin, TX 78701.

JURISDICTION AND VENUE

4. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 271.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

FACTS

7. Volusion makes and sells e-commerce software products, including Volusion Smart Match Technology, to customers throughout the United States, including in this Judicial District.

8. As described more fully below, these products infringe multiple patents owned by Versata.

9. On December 21, 2004, the USPTO duly and legally issued United States Patent No. 6,834,282 B1 (“the ‘282 Patent”), entitled “Logical And Constraint Based Browse Hierarchy With Propagation Features.” Versata holds all right, title, and interest in and to the ‘282 Patent, including the right to sue and recover damages for infringement thereof. A true and correct copy of the ‘282 Patent is attached as **Exhibit A**.

10. On December 20, 2005, the USPTO duly and legally issued United States Patent No. 6,978,273 B1 (“the ‘273 Patent”), entitled “Rules Based Custom Catalogs Generated From A Central Catalog Database For Multiple Entities.” Versata holds all right, title, and interest in and to the ‘273 Patent, including the right to sue and recover damages for infringement thereof. A true and correct copy of the ‘273 Patent is attached as **Exhibit B**.

11. On September 16, 2008, the USPTO duly and legally issued United States Patent No. 7,426,481 B1 (“the ‘481 Patent”), entitled “Method And Apparatus For Sorting Products By Features.” Versata holds all right, title, and interest in and to the ‘481 Patent, including the right to sue and recover damages for infringement thereof. A true and correct copy of the ‘481 Patent is attached as **Exhibit C**.

12. Upon information and belief, Volusion makes, uses, licenses, sells, and offers for sale into the State of Texas, in this judicial district, and elsewhere within the United States its Volusion Smart Match Technology, which infringes the ‘282, ‘273, and ‘481 Patents.

COUNT I: INFRINGEMENT OF THE ‘282 PATENT

13. Versata incorporates the foregoing paragraphs as if fully set forth here.

14. Volusion has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘282 Patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, and offering for sale software products, including Volusion Smart Match Technology, as well as related services.

15. Volusion’s infringement has caused, and is continuing to cause, injury to Versata.

16. Versata has been damaged by Volusion’s infringement of the ‘282 Patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Volusion is permanently enjoined from infringing the ‘282 Patent.

17. At least as early as its receipt of this Complaint, Volusion has had knowledge of the ‘282 Patent and written notice of the infringement.

COUNT II: INFRINGEMENT OF THE ‘273 PATENT

18. Versata incorporates the foregoing paragraphs as if fully set forth here.

19. Volusion has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '273 Patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, and offering for sale software products, including Volusion Smart Match Technology, as well as related services.

20. Volusion's infringement has caused, and is continuing to cause, injury to Versata.

21. Versata has been damaged by Volusion's infringement of the '273 Patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Volusion is permanently enjoined from infringing the '273 Patent.

22. At least as early as its receipt of this Complaint, Volusion has had knowledge of the '273 Patent and written notice of the infringement.

COUNT III: INFRINGEMENT OF THE '481 PATENT

23. Versata incorporates the foregoing paragraphs as if fully set forth here.

24. Volusion has been and is now directly infringing and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '481 Patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, and offering for sale software products, including Volusion Smart Match Technology, as well as related services.

25. Volusion's infringement has caused, and is continuing to cause, injury to Versata.

26. Versata has been damaged by Volusion's infringement of the '481 Patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Volusion is permanently enjoined from infringing the '481 Patent.

27. At least as early as its receipt of this Complaint, Volusion has had knowledge of the '481 Patent and written notice of the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Versata Software, Inc., Versata Development Group, Inc. pray for the following relief against Defendant Volusion, Inc.

A. A judgment in favor of Versata that Volusion has infringed, directly and indirectly by way of inducing infringement and/or contributing to the infringement of Versata's '282, '273, and '481 Patents;

B. A permanent injunction, enjoining Volusion along with its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, and parents from infringing, inducing the infringement of, or contributing to the infringement of Versata's '282, '273, and '481 Patents;

C. A judgment and order requiring Volusion to pay Versata damage for Volusion's infringement of Versata's '282, '273, and '481 Patents, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. § 284;

D. A judgment and order finding Volusion's infringement willful and awarding treble the amount of damages and losses sustained by Versata as a result of Volusion's infringement under 35 U.S.C. § 284;

E. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Versata its reasonable attorneys' fees; and

F. Such other and further relief in law or in equity to which Versata may be justly entitled.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of any and all issues triable of right before a jury.

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING, P.C.

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